

HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No.20335 OF 1995

Between:

P. Prem Sagar

... Petitioner

AND

Vice Chancellor,
University of Hyderabad,
Gachibowli, Hyd – 500 134
and another

... Respondents

:: O R D E R ::

Counsel for the petitioner : Shri V. Hari Haran

Counsel for the respondents : Shri N.V. Sumanth for
Indus Law Firm

July 25, 2007

After more than two years of accepting appointment as Office Assistant in the employment of University of Hyderabad (for short, 'the University'), the petitioner represented for his retrospective appointment as Senior Assistant with effect from 1-11-1990, but could not persuade the Grievance Committee constituted by the University to entertain his claim. This is the reason why he has sought the Court's intervention.

It is borne out from the record that in furtherance of policy framed by the Executive Council of the University in its meeting held

on 10-10-1987, which was notified on 4-11-1987, the Registrar of the University issued advertisement dated 16-4-1990 for recruitment of Senior Assistants/Audio Visual Technician/Technical Assistant/Radiographer/Specialist Coaches/ Stenographers/Mess Supervisor/Meter Reader/Junior Lab Assistant/Junior Office Assistants. At the relevant time, the petitioner was working as Lower Division Clerk in the service of the Municipal Corporation of Hyderabad. He passed the written test and was called for interview. The Selection Committee did not find him suitable for the post of Senior Assistant, but recommended his case for appointment as Office Assistant against one of the four posts of Senior Assistants. The competent authority of the University accepted the recommendations and issued order dated 5-10-1990 vide which the petitioner was offered the post of Office Assistant in the pay scale of Rs.1200-2040. The petitioner accepted the offer of appointment and joined the post of Office Assistant without any protest.

In September 1991, the Registrar of the University again advertised two posts of Senior Assistants in the scale of Rs.1640-2900, which were reserved for scheduled castes candidates. The petitioner applied pursuant to that advertisement. He qualified the written test, but was not selected in the interview. The Selection Committee recommended the names of Shri B. Gnanakumar, Shri G.S.B. Benhur, Shri V.S. John Wesley Kumar and Shri Ch. Vijayaprasad.

After two years of joining service as Office Assistant and almost one year of his non-selection pursuant to the advertisement issued in September 1991, the petitioner made representation dated 2-11-1992, which, as mentioned above, was rejected by the Grievance Committee on the ground that the Selection Committee has not recommended his case for appointment as Senior Assistant. The decision taken in the meeting of the Grievance Committee held on 12-1-1994 was communicated to the petitioner, who unsuccessfully tried to manipulate

the University apparatus for redressal of the so-called grievance in the matter of non-appointment as Senior Assistant. However, representations dated

5-9-1994 and 4-11-1994 made by him were rejected by the University vide office memo dated 28-4-1995. After another four months, he filed writ petition under Article 226 of the Constitution of India by impleading the Vice-Chancellor and the Registrar (Personnel) of the University as party respondents and prayed for issue of a mandamus to the respondents to appoint him as Senior Assistant with retrospective effect from 1-11-1990.

The aforementioned prayer of the petitioner is founded on the assertion that he had applied for the post of Senior Assistant and, therefore, the University could not have appointed him as Office Assistant, more so because that post was not even advertised. He has pleaded that the decision of the respondents not to appoint him as Senior Assistant is vitiated by arbitrariness and violation of his right to equality in the matter of employment guaranteed under Articles 14 and 16 of the Constitution.

In the counter filed by Shri T. Malyadri, the then Registrar of the University, a reference has been made to the advertisements issued in April 1990 and September 1991, the factum of consideration of the petitioner's candidature and his non-selection for appointment on the post of Senior Assistant as also the recommendations made by the first Selection Committee for his appointment as Office Assistant. The Registrar has also mentioned that the petitioner had accepted the offer of appointment against the post of Office Assistant without raising objection of any kind and, therefore, he is estopped from claiming retrospective appointment on the post of Senior Assistant. According to him, all the posts of Senior Assistants have already been filled on regular basis, by appointing the candidates recommended by the Selection Committee.

Shri V. Hari Haran, learned counsel for the petitioner reiterated

the grounds taken in the affidavit of the petitioner and urged the Court to issue a mandamus to the respondents to appoint his client as Senior Assistant with retrospective effect by arguing that denial of appointment on the advertised post should be construed as hostile discrimination. Learned counsel emphasised that even though the petitioner had accepted the offer of appointment as Office Assistant without any objection, this should not be construed as waiver of his right to be appointed against one of the advertised posts of Senior Assistant.

Shri N.V. Sumanth, Advocate, appearing for the respondents argued that the petitioner cannot claim appointment on the post of Senior Assistant as of right because the Selection Committee did not recommend his name for that post. He further argued that the petitioner cannot seek mandamus because he accepted appointment on the post of Office Assistant without any reservation.

I have considered the respective submissions. It is settled law that recommendations made by the recruiting agencies like Public Service Commissions etc., do not create an indefeasible right in favour of the selected candidate and ordinarily, he/she cannot seek a mandamus for compelling the employer to appoint him or her against the advertised post – **State of Haryana v. Subash Chander Marwaha**^[1], **Jitender Kumar v. State of Punjab**^[2] and **Shankarsan Dash v. Union of India**^[3]. This being the legal position, it is not possible to entertain the petitioner's prayer that even though the Selection Committee had not recommended his name for appointment against one of the advertised posts of Senior Assistant, the Court should issue mandamus to the respondents to appoint him on that post.

I am further of the view that the writ petition is liable to be dismissed because,

- (i) the petitioner has not impleaded the University as party to

the writ petition. The Vice-Chancellor and the Registrar (Personnel) are authorities constituted under the University Act, but they cannot be treated as University, which has a juridical personality of its own and which can sue and be sued in its own name. Indeed, it is neither the pleaded case of the petitioner nor the learned counsel argued that if appointed as Senior Assistant, the petitioner will be employee of the Vice-Chancellor.

In **Ranjeet Mal v. General Manager, Northern Railway, New Delhi**^[4], the Supreme Court while approving the view taken by the Single and Division Benches of the Rajasthan High Court that non-impleadment of employer as party respondent in such matters is fatal, observed thus:

- “1) It cannot be disputed that the appellant was a servant of the Union. It is equally indisputable that any order of removal is removal from service of the Union. The appellant challenged that order, Any order which can be passed by any Court would have to be enforced against the Union. The General Manager or any other authority acting in the Railway Administration is as much a servant of the Union as the appellant was in the present case.
- 2) The Union of India represents the Railway Administration. The Union carries administration through different servants. These servants all represent the Union in regard to activities whether in the matter of appointment or in the matter of removal. It cannot be denied that any order which will be passed on an application under Article 226 which will have the effect of setting aside the removal will fasten liability on the Union of India, and not on any servant of the Union. Therefore, from all points of view, the Union of India was rightly held by the High Court to be a necessary party. The petition was rightly rejected by the High Court.”

In **Chief Conservator of Forests v. Collector**^[5], the Supreme Court considered and upheld the objection taken on behalf of the respondents to the maintainability of the writ petition filed by Chief Conservator of Forests as well as the appeal arising therefrom. Paragraphs 12 and 13 of the judgment, which contained discussion on

the subject, are extracted below:

“It needs to be noted here that a legal entity — a natural person or an artificial person — can sue or be sued in his/its own name in a court of law or a tribunal. It is not merely a procedural formality but is essentially a matter of substance and considerable significance. That is why there are special provisions in the Constitution and the Code of Civil Procedure as to how the Central Government or the Government of a State may sue or be sued. So also there are special provisions in regard to other juristic persons specifying as to how they can sue or be sued. In giving description of a party it will be useful to remember the distinction between misdescription or misnomer of a party and misjoinder or non-joinder of a party suing or being sued. In the case of misdescription of a party, the court may at any stage of the suit/ proceedings permit correction of the cause-title so that the party before the court is correctly described; however, a misdescription of a party will not be fatal to the maintainability of the suit/proceedings. Though Rule 9 of Order 1 CPC mandates that no suit shall be defeated by reason of the misjoinder or non-joinder of parties, it is important to notice that the proviso thereto clarifies that nothing in that Rule shall apply to non-joinder of a necessary party. Therefore, care must be taken to ensure that the necessary party is before the court, be it a plaintiff or a defendant, otherwise, the suit or the proceedings will have to fail. Rule 10 of Order 1 CPC provides remedy when a suit is filed in the name of the wrong plaintiff and empowers the court to strike out any party improperly joined or to implead a necessary party at any stage of the proceedings.

The question that needs to be addressed is, whether the Chief Conservator of Forests as the appellant-petitioner in the writ petition/appeal is a mere misdescription for the State of Andhra Pradesh or whether it is a case of non-joinder of the State of Andhra Pradesh — a necessary party. In a lis dealing with the property of a State, there can be no dispute that the State is the necessary party and should be impleaded as provided in Article 300 of the Constitution and Section 79 CPC viz. in the name of the State/Union of India, as the case may be, lest the suit will be bad for non-joinder of the necessary party. Every post in the hierarchy of the posts in the government set-up, from the lowest to the highest, is not recognised as a juristic person nor can the State be treated as represented when a suit/proceeding is in the name of such offices/posts or the

officers holding such posts, therefore, in the absence of the State in the array of parties, the cause will be defeated for non-joinder of a necessary party to the lis, in any court or tribunal. ...”

(ii) none of the candidates, who were selected pursuant to advertisement in 1991, has been impleaded as a party to the writ petition and without hearing such persons, relief in terms of the prayer made by the petitioner cannot be granted. If the petitioner’s plea is accepted and it is held that he had a rightful claim to be selected and appointed on the post of Senior Assistant, one of the selectees of September 1991 advertisement will have to make room for him. However, as neither of the two candidates, who were appointed pursuant to the advertisement of September 1991, has been impleaded as a party to the writ petition, the Court cannot issue a direction, which will affect his substantive right to continue in the employment of the University.

(iii) the writ petitioner is guilty of laches. He has not offered any explanation whatsoever for the long time gap of two years between the date of his joining as Office Assistant pursuant to order dated 5-10-1990 and the date of making representation i.e. 2-11-1992. The mere fact that his representation was considered by the Grievance Committee in its meeting held on 4-1-1994 and was rejected cannot be made basis for overlooking the long time gap of two years. That apart, even after rejection of his representation by the Grievance Committee, the petitioner waited for one year and eight months before instituting the writ petition. The successive representations made by him cannot be taken into consideration for the purpose of explaining the delay. Therefore, at this stage, I do not find any justification to entertain the petitioner’s prayer for appointment as Senior Assistant with retrospective effect from 1-11-1990.

In the result, the writ petition is dismissed.

G.S.SINGHVI, CJ

July 25, 2007

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[\[1\]](#) AIR 1973 SC 2216 = (1974) 3 SCC 220

[\[2\]](#) (1985) 1 SCC 122 = AIR 1984 SC 1850

[\[3\]](#) AIR 1991 SC 1612 = (1991) 3 SCC 47

[\[4\]](#) AIR 1977 SC 1701

[\[5\]](#) (2003) 3 SCC 472